

**** E-filed October 9, 2009 ****

NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

FELITA SAMPLE,

No. C09-01005 HRL

Plaintiff,

**ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS PLAINTIFF'S
SECOND AMENDED COMPLAINT**

v.

MONTEREY COUNTY FAMILY AND
CHILDREN SERVICES, et al.,

[Re: Docket Nos. 38, 39]

Defendants.

Pro se plaintiff Felita Sample instituted this lawsuit in March 2009. Two amended complaints later, defendants Monterey County Family and Children Services ("Monterey County") and Yolanda Watson now again move to dismiss Sample's Second Amended Complaint ("SAC") for lack of subject-matter jurisdiction and for failure to state a claim upon which relief may be granted.¹ Sample opposes the motion.² Upon consideration of the moving and responding papers, as well as the arguments presented at the motion hearing, this court GRANTS defendants' motion.³

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¹ Defendants also moved to dismiss on other grounds, including abstention, preclusion, the *Monell* doctrine for defendant Monterey County, and qualified or absolute immunity for defendant Watson.

² As she did with defendants' motion to dismiss her First Amended Complaint, Sample spends the bulk of her opposition arguing that defendants must first file an answer. As this court already explained to her, a defendant may file a motion to dismiss before filing a responsive pleading. See Fed. R. Civ. P. 12.

³ Pursuant to 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73, all parties have expressly consented that all proceedings in this matter may be heard and finally adjudicated by the undersigned.

LEGAL STANDARD

A party may raise a lack of subject-matter jurisdiction by motion. Fed. R. Civ. P. 12(b)(1). If a court determines that it does not have subject-matter jurisdiction, it must dismiss the claim. Fed. R. Civ. P. 12(h)(3). A lack of jurisdiction is presumed unless the party asserting jurisdiction establishes that it exists. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). The party challenging jurisdiction may do so based on the allegations in the complaint itself (a facial attack) or on extrinsic evidence (a factual attack). *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). When the moving party raises a factual challenge by presenting affidavits and other evidence, the opposing party must also present affidavits or other evidence to satisfy its burden of establishing subject-matter jurisdiction. *Id.* (citing *Savage v. Glendale Union High Sch.*, 343 F.3d 1036, 1039 n.2 (9th Cir. 2003)).

A court may also dismiss a complaint for failure to state a claim upon which relief may be granted. Fed. R. Civ. P. 12(b)(6). The complaint's well-pled facts must "raise a right to relief above the speculative level." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Thus, only plausible claims for relief will survive a motion to dismiss. *Ashcroft v. Iqbal*, --- U.S. ----, 129 S. Ct. 1937, 1950 (2009). A claim is plausible if its factual content "allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* at 1949. A plaintiff does not have to provide detailed facts, but the pleading must include "more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Id.* Indeed, allegations that are conclusory are "not entitled to be assumed true." *Id.* at 1951. Even so, a court will liberally construe pleadings by pro se parties. *Eldridge v. Block*, 832 F.2d 1132, 1137 (9th Cir. 1987).

DISCUSSION**A. Background and Procedural History**

In 1995, Seaside Police arrested Sample for an outstanding warrant while she was in her car with her three minor children. Following her arrest, the police released her children to her aunt. Sample alleges that while she was still incarcerated, Monterey County illegally removed her children from her aunt's home without a warrant. (SAC 1-2.)

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1 In March 2009, Sample sued Monterey County for violations of the Fourth Amendment and
2 the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (the “Welfare
3 Reform Act”), alleging impropriety in her children’s 1995 removal and subsequent placement with a
4 relative in Texas. (Docket No. 1.) Monterey County filed a motion to dismiss, but before the
5 motion was submitted, Sample amended her complaint as a matter of course and added a second
6 defendant: social worker Yolanda Watson. *See* Fed. R. Civ. P. 15(a)(1). The court then terminated
7 the motion to dismiss as moot. (Docket No. 13.)

8 Sample’s First Amended Complaint (“FAC”) contended that Monterey County removed her
9 children in a non-emergency situation without a warrant in violation of the Fourth Amendment.
10 (Docket No. 10.) It also alleged that Watson and “the court” violated the Welfare Reform Act by
11 sending her children to live so far away that she was effectively denied visitation rights. Defendants
12 filed a second motion to dismiss, which this court granted based on a lack of subject-matter
13 jurisdiction, but with leave to amend. (Docket No. 32.)

14 Sample timely filed her Second Amended Complaint (“SAC”). (Docket No. 33.) The SAC
15 no longer pleads a claim based on the Welfare Reform Act, and also appears on its face to no longer
16 make any claim against defendant Watson. Yet the SAC retains Sample’s allegation that Monterey
17 County illegally removed her children and further alleges that it denied her due process by failing to
18 notify her of her children’s removal hearing before the Superior Court of California for the County
19 of Monterey, Juvenile Dependency Court (“Dependency Court”).

20 **A. Request for Judicial Notice**

21 The court will first address the defendants’ request for judicial notice of certified copies of
22 the Dependency Court’s orders from the October 11, 1995 removal hearings for Sample’s three
23 children. (Request for Judicial Notice Exs. A–C.) “A court may take judicial notice of ‘matters of
24 public record’ without converting a motion to dismiss into a motion for summary judgment,” as
25 long as the facts are not subject to reasonable dispute. *Lee v. City of Los Angeles*, 250 F.3d 668, 689
26 (9th Cir. 2001); *see also* Fed. R. Evid. 201(b). At the motion hearing, Sample confirmed that she
27 had received copies of the orders and that the names of her three children and court-appointed
28 counsel are the same as those in the orders. Consequently, this court may take judicial notice of the

fact that the removal hearings occurred on October 11, 1995, and the fact that the Dependency Court recorded certain events as taking place and made certain findings, as such facts are not subject to reasonable dispute. *See Lee*, 250 F.3d at 689–90.

B. Subject-Matter Jurisdiction

This court previously held that the *Rooker-Feldman* doctrine applied to Sample’s FAC and dismissed it for lack of subject-matter jurisdiction. (Order 3–5, Aug. 7, 2009.) Defendants argue that because Sample still alleges an error by the Dependency Court and seeks relief from that court’s judgment, *Rooker-Feldman* also denies jurisdiction over the SAC. (Mot. 3.) Sample counters that this court does have subject-matter jurisdiction due to the applicability of an exception to the doctrine. Because defendants have presented evidence in their motion that go beyond the face of the complaint, this court will evaluate it as a factual challenge to subject-matter jurisdiction.

Federal district courts do not have appellate jurisdiction over state court judgments. *See* 28 U.S.C. § 1257; *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 283 (2005). One application of this general rule is the *Rooker-Feldman* doctrine, which denies subject-matter jurisdiction over claims involving a prior loss in state court where the plaintiff asserts an injury caused by the state court’s legal error and requests as a remedy relief from the state court’s judgment. *Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1140 (9th Cir. 2004). When a plaintiff puts forth such a “forbidden de facto appeal” of a state court judgment, *Rooker-Feldman* then also bars claims that are “ ‘inextricably intertwined’ with an issue resolved by the local court in its judicial decision.” *Noel v. Hall*, 341 F.3d 1148, 1158 (9th Cir. 2003).

Although Sample emphasizes her allegation against Monterey County, a review of the SAC shows that the crux of her complaint continues to be that the Dependency Court decided to *keep* her children removed after Monterey County took them from her aunt’s home.⁴ For example, she pleads that the Dependency Court “erred in its interpretation of the removal of children without a warrant” and that Monterey County “has not tried one time to give my [remaining minor] child back to me.” (SAC 6:19–21; 7:6–10.) Furthermore, the Dependency Court’s orders indicate that during

⁴ Sample reinforced this conclusion at the motion hearing, as she again alleged that defendants violated the Welfare Reform Act by sending her children to live so far away that she could not afford to visit them—even though the SAC no longer includes such a claim.

1 the removal hearings, it considered whether Monterey County's removal was proper. (Request for
2 Judicial Notice Exs. A–C.) Thus, Sample's allegation that Monterey County illegally removed her
3 children is "inextricably intertwined" with the Dependency Court's overall decision to keep her
4 children removed.

5 Accordingly, Sample's claims still implicate *Rooker-Feldman*: she lost custody of her
6 children though a decision of the Dependency Court in 1995, prior to her federal complaint; she
7 asserts that this loss of custody was, in part, because that court erred in its decision upholding
8 Monterey County's removal process; and she requests as a remedy the restoration of custody for her
9 remaining minor child. Therefore, just as with the FAC, this court would have to review and reject
10 the Dependency Court's removal decision in order to evaluate her claims. As such, it does not have
11 subject-matter jurisdiction.

12 Nonetheless, Sample, apparently inspired by this court's discussion in its order dismissing
13 the FAC, now alleges the "extrinsic fraud" exception to *Rooker-Feldman*.⁵ But this exception only
14 applies if the "plaintiff alleges a cause of action for extrinsic fraud on a state court and seeks to set
15 aside a state court judgment obtained by that fraud." *Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1141
16 (9th Cir. 2004). If the proceeding at issue is instead " 'merely tantamount to the common-law
17 practice of moving to set aside a judgment for irregularity, or to a writ of error, or to a bill of review
18 or an appeal,' " the exception does not apply. *Id.* (quoting *Barrow v. Hunton*, 99 U.S. 80, 82–83
19 (1878)).

20 Sample alleges that Monterey County "used 'extrinsic fraud' " when it held the removal
21 hearing while she was in jail without notifying her so she could attend. (SAC 3:11–18.) She says
22 that as a result of this fraud, she was denied due process. Yet the Dependency Court's decision to
23 keep Sample's children removed would have been based on evidence such as the reasons the
24 children were removed, the need for continued detention, the services available to the children, and
25 whether one of several specific grounds existed for the detention. Cal. R. Ct. 1444–45 (1995); *see*
26

27 ⁵ The discussion of extrinsic fraud in the August 7, 2009 order was directed to Sample's allegation
28 in the FAC that defendant Watson had withheld information from the Dependency Court when it
decided to send Sample's children to Texas in 1997. (Order 5.) Sample makes no allegations of
fraud by Watson in her SAC.

also Cal. Welf. & Inst. Code § 319 (1995). The applicable court rules even note that “[i]n making the findings prerequisite to an order of detention, the court may rely *solely* upon written police reports, probation or social worker reports, or other documents.” Cal. R. Ct. 1444(b) (1995) (emphasis added). As a result, Sample is not alleging extrinsic fraud on the state court—instead, she seeks to set aside that court’s judgment on account of its alleged error when it made its decision after reviewing the evidence. Consequently, the “extrinsic fraud” exception does not apply and Sample has failed to establish that this court has subject-matter jurisdiction over her claims.

C. Alternative Grounds for Dismissal

1. Statute of Limitations

Even if this court had subject-matter jurisdiction, Sample’s complaint fails to state a claim upon which relief may be granted because she filed it well outside the applicable statute of limitations and does not plausibly plead any tolling of the statute. Although the SAC does not specify the date when Monterey County removed her children from her aunt’s home, it does assert that Monterey County took them when she “was in custody in Monterey County Jail” following her arrest in 1995. (SAC 2:22–25.) Furthermore, the Dependency Court orders for the children’s removal hearings are dated October 11, 1995. (Request for Judicial Notice, Exs. A–C.) Sample then confirmed at the motion hearing that the events in her complaint occurred in 1995.

Sample’s claim appears to be most fairly read as a civil rights claim under 42 U.S.C. § 1983, as she alleges that Monterey County illegally took her children without a warrant and denied her due process. (SAC 3:15–16.) Section 1983 does not have its own statute of limitations, so “courts apply the most closely analogous statute of limitations under state law.” *Reed v. United Transp. Union*, 488 U.S. 319, 323 (1989) (citations omitted). In California, courts apply the state’s statute of limitations for personal injury actions to § 1983 claims, which was one year in 1995. *Taylor v. Regents of Univ. of Cal.*, 993 F.2d 710, 711–12 (9th Cir. 1993); *see also Aguilera v. Heiman*, 95 Cal. Rptr. 3d 18, 23 (Ct. App. 2009) (holding that the 2003 revision of the California Code of Civil Procedure, which extended this limitation to two years, was not retroactive).⁶

⁶ At the motion hearing, Sample argued that there was *no* time limit for her claim, citing to *Weeks v. United States*, 232 U.S. 383 (1914), in support. Although *Weeks* establishes warrant requirements under the Fourth Amendment, it does not address statutes of limitation.

1 A civil rights claim “accrues when the plaintiff knows or has reason to know of the injury
2 which is the basis of the action.” *TwoRivers v. Lewis*, 174 F.3d 987, 991 (9th Cir. 1999) (noting that
3 federal law, not state law, applies for accrual of civil rights claims). Sample had reason to know of
4 the injury of which she alleges—that her children were taken illegally—when she learned in 1995
5 that Monterey County removed her children. The deadline for her to file this complaint was then
6 one year later, in 1996. However, Sample did not file her complaint until 2009—a delay of
7 approximately thirteen years. As a result of this delay, Sample must plead sufficient facts to raise a
8 plausible claim of equitable tolling under California law for her claim to survive a motion to
9 dismiss. *See Jablon v. Dean Witter & Co.*, 614 F.2d 677, 682 (9th Cir. 1980); *TwoRivers*, 174 F.3d
10 at 991.

11 Even though this court’s August 7, 2009 order told Sample to address the statute of
12 limitations in any amended complaint (Order 6), the SAC is devoid of *any* facts on this issue. After
13 defendants noted this deficiency in their moving papers, Sample attempted to address the problem in
14 her opposition. She asserts that after her children were removed, she had a “mental health
15 breakdown” and that “[o]nly through therapy . . . determined that her children were taken illegally.”
16 (Opp’n 3.) Yet ignorance of the law alone will not equitably toll a statute of limitations. *See, e.g.*,
17 *Hogar Dulce Hogar v. Cmty. Dev. Comm’n of Escondido*, 2 Cal. Rptr. 3d 497, 503 (Ct. App. 2003);
18 *see also Raspberry v. Garcia*, 448 F.3d 1150, 1154 (9th Cir. 2006). Furthermore, this explanation is
19 just a variation on what she told this court prior to its dismissal of the FAC: that the delay was
20 because she had “just found out about her constitutional rights.” (Order 6.) Even accepting as true
21 that Sample was unaware of her rights until 2009, the law does not provide for tolling of the one-
22 year statute of limitations merely because therapy later apprised her of the status of the law.

23 Sample also asserts no facts, even read liberally, that plausibly suggest her mental health
24 status somehow justified such a lengthy delay. Again, the SAC pleads no facts on this point. Her
25 opposition states that her “mental health breakdown” occurred in the years “since” her children were
26 removed—and thus *after* the accrual of this action—so she cannot rely on this potential disability to
27 toll the statute. (Opp’n 3:20–22); Cal. Code Civ. P. § 357 (“No person can avail himself of a
28 disability, unless it existed when his right of action accrued.”) Nor does she allege that her mental

1 health itself somehow prevented her from filing a complaint on time. *See* Cal. Code. Civ. P. § 352
2 (providing for tolling if the plaintiff was “insane” at the time of accrual). No other tolling
3 provisions under California law appear to apply to her claim. As a result, the allegations in the SAC
4 cannot be read to plausibly toll the statute of limitations from 1996 to 2009.

5 **2. Failure to State a Claim**

6 Even had Sample appropriately alleged tolling of the statute of limitations, the SAC still fails
7 to raise a plausible claim for relief. Sample’s primary claim is that Monterey County removed her
8 children without a warrant in a non-emergency while she was in jail. Yet she offers nothing more
9 than conclusory statements in support of her claim, and she even acknowledges that a parent’s
10 incarceration is one circumstance in which California law allows state social workers to remove
11 children without a warrant (SAC 2:1–7).

12 In addition, the Dependency Court’s findings flatly contradict her allegation. The court rules
13 in effect at the time required the Dependency Court to “determine whether reasonable efforts to
14 prevent or eliminate the need for removal were made.” Cal. R. Ct. 1445 (1995). The court may find
15 that reasonable efforts were made, that reasonable efforts were not made, or that a lack of effort was
16 reasonable “because of the emergency nature of the removal.” *Id.* In this case, the Dependency
17 Court found that “[a]ny lack of preplacement preventive efforts was reasonable because of the
18 *emergency nature of the removal.*” (Request for Judicial Notice, Exs. A–C (emphasis added).)

19 The Dependency Court’s orders similarly contradict Sample’s claim that Monterey County
20 failed to give her notice of the removal hearings. The orders indicate that “[n]otice of the Hearing
21 was given as required by law” and even that Sample was present at the hearings, was represented by
22 counsel, and “personally” denied the allegations of the petition. (*Id.*) When this court questioned
23 Sample on this point at the motion hearing, she admitted that she could not remember whether she
24 had been present or not. Even more, when told that the Dependency Court orders indicated she had
25 been at the removal hearings, she responded, “Well, then, I was there.”

26 Finally, the SAC fails to raise any allegations whatsoever against defendant Watson.
27 Sample’s claim against Watson in the FAC was based on the Welfare Reform Act. (FAC 4–6.) The
28 SAC no longer pleads a violation of this Act and Watson’s name appears nowhere in it. Sample has

1 thus failed to state a plausible claim for relief against either defendant.

2 **CONCLUSION**

3 Sample amended her complaint once as a matter of course, and this court allowed her to
4 amend a second time to state a claim over which this court had subject-matter jurisdiction and to
5 address defendants' other grounds for dismissal. Sample has failed to remedy these deficiencies,
6 which still persist in the SAC, and the court does not believe that allowing Sample the opportunity
7 to amend her complaint a fourth time would produce a different result. Consequently, the court
8 GRANTS defendants' motion to dismiss WITH PREJUDICE. Judgment will be entered for
9 defendants.

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11 **IT IS SO ORDERED.**

12 Dated: October 9, 2009

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15 HOWARD R. LLOYD
16 UNITED STATES MAGISTRATE JUDGE
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1 **C 09-01005 Notice will be electronically mailed to:**

2 Irven L. Grant granti@co.monterey.ca.us, mcmillincb@co.monterey.ca.us

3 **Notice will be send by other means to:**

4 Felita Sample
1406 Sturgeon Street #B
5 San Francisco, CA 94130

6 **Counsel are responsible for distributing copies of this document to co-counsel who have not**
7 **registered for e-filing under the court's CM/ECF program.**

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